

Channel 293C2 may be allotted to Taft consistent with the Commission's separation requirements at a site 21.7 kilometers southeast of the community. Further, allotting Channel 293C2 to Taft would permit Taft to have its first local aural service, triggering allotment priority number three of the Commission's allotment priorities. Pacific acknowledges that while its proposal would provide a first local aural transmission service to Taft, the proposal removes the sole local operating service from Refugio. In support of this removal, Pacific refers to the then pending proceeding to allot Channel 263A at Refugio as well as its proposal for a Channel 291A allotment at Refugio. To ensure continued local service at Refugio, Pacific states that it will file an application for Channel 291A and Channel 263A at Refugio and simultaneously commence program tests on Channel 293C2 at Taft and on a channel in Refugio assuming no other applicant applies or is awarded a construction permit for a channel at Refugio. In further support of its request, Pacific states that Taft has a population of 5,234 people, while Refugio has a population of 3,158 people according to the 1990 U.S. Census. Pacific argues that all things being equal, under the Commission's allotment priorities scheme, the allotment to Taft would prevail because a first local service would be provided to the larger community. As detailed below, Pacific has also set forth other factors favoring its proposal at Taft.

3. We believe that Pacific's proposal warrants consideration since the substitution of Channel 293C2 for Channel 291C3 at Refugio and the reallocation of Channel 293C2 from Refugio to Taft could result in a preferential arrangement of allotments, would enable Station KTKY(FM) to upgrade its facilities, and would not cause the removal of Refugio's sole local aural service. With respect to the first of these issues, the proposed arrangement of allotments appears preferable to the existing arrangement. The proposed arrangement of allotments triggers priority (3) because it would result in a first local transmission service to Taft (population 5,234). Likewise, since the Commission has defined "existing service" for change of community cases as "on air stations,"³ the existing arrangement of allotments triggers priority 3 because it provides a first local transmission service to Refugio (population 3,158). Even though both the existing and proposed arrangement of allotments trigger priority (3), the proposed arrangement would be preferred because it results in a first local service to a community with a greater population.

4. Second, the upgrade and reallocation of Station KTKY(FM) from Refugio to Taft appears to result in an increase of 281,408 people receiving 60 dBu service from KTKY(FM) from 72,810 to 354,218. Although Pacific claims that approximately 1,000 people will lose service from Station KTKY(FM), our staff engineering analysis confirms that no white or gray areas would be created. Our analysis also reveals that the entire loss area appears to be well served with five or more full-time reception services. Moreover, most of the people in the loss area would receive

³ See Change of Community MO&O, 5 FCC Rcd at 7097, para. 19 and n.16 (1990) (vacant allotments or unconstructed construction permits are not considered to be existing services for change of community proceedings under Section 1.420(i) of the Commission's Rules but are counted as existing services in other contexts, such as FM and TV allotment proceedings not involving Section 1.420(i)). As a result, even though Channel 265A was allotted to Refugio several months after Pacific's rulemaking petition was filed, Channel 263A is not considered to be an existing service.

replacement service from the recently allotted Channel 263A at Refugio or Channel 291A, if it were allotted to Refugio. The petitioner is requested to update its analysis and to determine the number of full-time reception services available to people in the loss area. It is further requested to identify the number of people that would receive no replacement service following the reallocation of Channel 293C2 to Taft and the allotment of Channel 263A and/or Channel 291A at Refugio and the number of full-time reception services available to such people.

5. Third, Pacific's proposal would not result in the removal of Refugio's sole local aural service, Station KTKY(FM). This is due to the fact that we already allotted Channel 263A at Refugio and are now proposing another allotment on Channel 291A. Further, Pacific has stated its willingness to file an application for Channel 291 and to commence program tests simultaneously on Channel 293C2 at Taft and on Channel 291A at Refugio. Alternatively, Pacific commits to provide service on Channel 263A at Taft if that channel becomes available first and if Pacific is the prevailing applicant. To ensure that local service will continue to be provided to Refugio, we would condition the grant of an authorization to operate Station KTKY(FM) on Channel 293C2 at Taft upon activation of service at Refugio on either Channel 263A or Channel 291A. See Llano and Marble Falls, TX, 12 FCC Rcd 809 (1997).

6. In the Change of Community of License Order, the Commission expressed its concern with the potential migration of stations from rural areas to urban areas. The Commission relies on criteria established in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), to determine whether a community should be awarded a first local service preference.⁴ Although Taft is not located in an urbanized Area, the proposed 70 dBu contour of Station KTKY will encompass more than 50% of the Corpus Christi Urbanized Area requiring a showing that Taft is sufficiently independent of Corpus Christi to justify a first local service preference. See Headland, Alabama and Chatahoochee, Florida, 10 FCC Rcd 10352 (1995). Pacific has provided a showing supporting its view that Taft is an independent community deserving of a first local service preference.⁵

⁴ (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

⁵ Pacific provided the following information about the community of Taft. Taft is an incorporated city in San Patricio County located approximately 15 miles from Corpus Christi, Texas. Taft is separated from Corpus Christi by the communities of Gregory and Portland and is further separated from Corpus Christi by the Nueces Bay which is approximately three miles wide. According to the 1990 U.S. Census Taft has a population of 5,234 people and the city has identifiable boundaries. Taft has its own city government consisting of an elected Mayor and City Counsel. There is a full-time City Manager, a Police Department and Fire Department and four schools. Taft has its own newspaper, the Taft Tribune, its own telephone book and separate zip code (78390). Taft is an agricultural community which supports its local businesses, senior citizens home, and has its own medical and dental professional buildings. Local businesses serve the residents of Taft and advertise in the Taft Tribune. Many residents work in the Taft Independent School district or other businesses located in and around Taft and more than 400 people work in the Central City of Taft.

7. Channel 293C2 can be allotted to Taft, Texas, in compliance with the minimum distance separation requirements at Pacific's specified site.⁶ As requested, we shall propose to modify the license for station KTKY(FM) to specify operation on Channel 293C2 at Taft, and in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 293C2 at Taft. Channel 291A can be allotted to Refugio in compliance with the Commission's spacing requirements with a site restriction 8.1 kilometers (5.0 miles) northwest of the community.⁷ Since Refugio and Taft are located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican government will be requested for both allotments.

8. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Refugio, Texas	263A, 291C3	263A, 291A
Taft, Texas	-----	293C2

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **September 7, 1999**, and reply comments on or before **September 22, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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⁶ The coordinates for Channel 293C2 at Taft are 27-52-00 and 97-13-08.

⁷ The coordinates for Channel 291A at Refugio are 28-21-58 and 97-19-11.

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, Washington, D. C.